

WHITING

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May 19, 1955
Opinion No. 55-125

REQUESTED BY: Mr. Forrest N. Barr, Division of Insurance
Arizona Corporation Commission
Capitol Annex, Phoenix, Arizona

OPINION BY: ROBERT MORRISON, The Attorney General
Norman H. Whiting, Assistant Attorney General

QUESTION: In view of Sections 61-1710 and 61-1711, ACA, 1939, what persons on the public payroll should not be qualified to hold an agent's, broker's, or solicitor's license, and what gauge should be used in determining whether a licensee or applicant for license is using or intending to use such license principally for the purpose of procuring insurance for himself or members of his family or relatives to the second degree, in the case of life and disability, or upon the insurable interests of himself, family, relatives, employer, employees of a firm in which he owns an interest, etc., in the case of licenses for insurance other than life? Also, should licenses be revoked as soon as disqualifications are discovered, or should the Director wait until licenses expire on June 30, and then refuse to renew?

CONCLUSION: All full time employees of the State, County and municipalities should not be qualified to hold an agent's, broker's or solicitor's license. School teachers would not be included among these, as a school district is not a municipality.

"Principally" is not a concise word and would be up to the director of insurance to decide who was "using or intending to use his license" principally for the purpose of procuring insurance for himself, members of his family, or relatives to the second degree. Within the opinion are statutes and cases of other states which might be used as a guide post for the director.

The Director should revoke licenses as soon as disqualifications are discovered.

Our insurance code, as passed by our last Legislature, is in many parts entirely new to this jurisdiction, so that we will have to interpret the meaning of many of the sections, without the aid

of prior decisions from our courts. The pertinent sections are set out below:

"61-1711. General qualifications - Agent, broker, solicitor licenses - Life and disability.-- For the protection of the people of Arizona, the director shall not issue, renew, or permit to exist any agent, broker, or solicitor license with respect to life and disability insurances except in compliance with this article, or with respect to any individual not qualified therefor as follows:

- (a) Must be of age 18 or more.
- (b) Must be a resident of Arizona, and if agent or broker, must have been such resident for not less than the six (6) months immediately preceding application for the license.
- (c) Must pass any written examination for the license required under this article.
- (d) If for an agent's license, must have been appointed as agent by an authorized insurer, subject to issuance of the license.
- (e) If for a solicitor's license, must have been appointed as solicitor by a licensed resident agent or broker.
- (f) Must not use or intend to use the license principally for the purpose of procuring insurance covering himself or members of his family or his relatives to the second degree.
- (g) Must not be a full time employee of the executive or administrative branches of the state government of Arizona, or of any county or municipality in Arizona."

"61-1710. General qualifications - Agent, broker, solicitor licenses - Other than life.-- For the protection of the people of Arizona, the director shall not issue, renew, or permit to exist any agent, broker, or solicitor license with respect to insurance other than life and disability, except in compliance with this article, or with respect to any individual not qualified therefor as follows:

- (a) Must be of age 21 or more.
- (b) Must be a resident of Arizona, and, if agent or broker, must have been such resident for not less than the six (6) months immediately preceding application for the license.
- (c) Must pass any written examination for the license required under this article.

- (d) If for an agent's license, must have been appointed as agent by an authorized insurer, subject to issuance of the license.
 - (e) If for a solicitor's license, must have been appointed as solicitor by a licensed resident agent or broker.
 - (f) Must not be a full time employee of the executive or administrative branches (branches) of the government of Arizona, or of any county or municipality in Arizona.
 - (g) Must not use or intend to use the license principally for the purpose of procuring insurance on his property or his insurable interests, or on property or insurable interests of his relatives to the second degree, his employer, employees, or firm, or corporation in which he owns a substantial interest, or of the employees of such firm or corporation, or on property or insurable interests for which the applicant or any such relative, employer, firm, or corporation is the bailee, trustee, or receiver. A vendor's or lender's interest in property sold or being sold under contract or which is the security for any loan, shall not, for the purposes of this provision, be deemed to constitute property or an insurable interest of such vendor or lender."
- Compiler's Note. The bracketed word "braches" was inserted by the compiler.

The qualifications for an agent's, broker's or solicitor's license are practically identical for life, and other than life, except that licenses for insurance other than life restrict the licensee from using such license to procure insurance on anything in which he or his relatives have an insurable interest, as well as employers, employees, or employees of any firm in which he owns a substantial interest.

Sub-section (f) of Section 61-1710 and Sub-section (g) of Section 61-1711 exclude all full-time employees of any executive or administrative branch of the government of Arizona, or any county or municipality in Arizona. Members of the judicial and legislative branches are not included, neither would it include part-time employees, such as mayors and councilmen of cities and members of the Boards of Supervisors of counties.

However, the question arises as to whether these sections would include such persons as school teachers, etc., who are not in a position to force the purchase of their insurance by the public.

We do not believe that the Legislature intended to include such persons. Below is a quotation from a transcript of a public hearing of a committee meeting on the proposed Insurance Code from the Senate Committee on Banking and Insurance:

"We were thinking primarily of administrative employees with executive authority in part, who might meet Mr. Nason's qualifications there, or description, and not the school teacher who inherently isn't in a position to force the purchase of his insurance."

Also, the section seems to limit the exclusions to employees of state, county, and municipalities. Searches of cases from other jurisdictions disclose that many jurisdiction include school districts within the term municipalities. However, many do not so include school districts within the term. Our Supreme Court has termed school districts as quasi-municipal corporations.

"School districts are quasi-municipal organizations created by the state to assist it in administering its system of free public schools." 55 Arizona 178

"Our Constitution, articles XIII and XIV, respectively divides corporations into "Municipal Corporations" and "Corporations Other Than Municipal." The provisions of article XIII clearly show that they pertain only to cities and towns, or proper municipal corporations, and the provisions of Article XIV "include all associations and joint stock companies having any powers or privileges of corporations not possessed by individuals or co-partnerships." If heed be given to these constitutional definitions of corporations, then, clearly, irrigation districts are not municipal and neither is their property." Arizona 55, 178

"There are certain kinds of corporations which under the Constitution cannot be created by special act. They are "Municipal Corporations" (art. 13) and "Corporations Other Than Municipal" (art. 14). That these educational institutions are not of the first kind goes without saying, nor do they fall within the latter kind. Arizona 45, 245

"We therefore hold that under the provisions of Section 16-1503, supra, a school district is not a municipality as defined therein and that the county was without authority to enter into the cooperative contract with School District No. 1 of Pima County involved in the litigation and said contract is null and void." Case #5971, Arizona Advance Sheets Services.

We believe that it was the legislative intent that only employees of the state government, county officers and officers of cities and towns be excluded from holding licenses as agent, broker, or solicitor.

As to the provision that a licensee shall not use or intend to use the license principally for procuring insurance covering himself or of his insurable interests, insurable interests of family members or relatives of the 2nd degree, employers, employees, etc., we have found several other jurisdictions which have attempted to control this use of a license, but none of these statutes are identical with ours.

The State of Washington has adopted a statute part of which is set out below:

"48.17.080 "Controlled business" disqualifications.

- (1) The commissioner shall not grant an agent's, solicitor's, or broker's license to any person if the commissioner has reasonable cause to believe that:
 - (a) During either of the two calendar years immediately preceding the request for renewal of any such license the aggregate amount of commissions represented by the controlled business procured by or through the licensee exceeded the aggregate amount of commissions represented by all other insurance business procured by or through him; or
 - (b) the circumstances of the applicant for such license or of any such licensee are such as to cause the commissioner reasonable to believe that during the twelve-month period immediately following issuance or renewal of the license, if so issued or renewed, the aggregate amount of commissions to be represented by all other insurance business to be procured by or through such applicant or licensee.
- (2) "Controlled business" means insurance procured or to be procured by or through such person upon:
 - (a) His own life, person, or property or those of his spouse or relatives by blood or marriage to the second degree;
 - (b) the life, person, or property of his employer, or his firm, or of any officer, director, stockholder, or member of his employer or firm, other than members of mutual insurers, or of any spouse of such employer, officer, director, stockholder, or member;
 - (c) the life, person, or property of his ward, or his employees; or upon persons or property under his supervision or control as trustee under any indenture or decree, or as administrator or executor of any estate.

(3) The vendor who is title holder of property being sold under an installment purchase contract shall not be deemed to be the owner of such property for the purposes of this section. (1947 c 79 § 17.08; Rem. Supp. 1947 § 45.17.08.)"

"48.17.150. Agent's and broker's qualifications. "(f) not intend to use or use the license for the purpose principally of writing controlled business, as defined in R.C.W. 48.17.080"

Texas has a similar statute disqualifying any licensee who sells more than 50% of insurance he sells, to himself or his insurable interests, or selling more than 75% of total insurance sold to controlled business, as defined in the above Washington Statute.

Our Legislature has used an unfortunate term in the use of the word "principally." This is a relative term, and many cases in other jurisdictions have held statutes invalid for indefiniteness where the word has been used.

However, we are not trying to guess whether our Supreme Court might hold this section as invalid, so we would suggest that the Director might determine whether a licensee was using a license principally to procure insurance for himself, family or others named in the statute, somewhat along the lines of the Washington Statute. Of course, a period of time for the determination must be set, as a licensee might sell a large amount of controlled insurance within a certain month, but over a period of a year, might sell a much greater amount of insurance not controlled in relation to controlled insurance.

The Insurance Code gives the Director the power to make regulations necessary for effectuating any provision of the Code, and he may conduct such examinations and investigations of insurance matters as he may deem proper.

He could require each broker, agent, or solicitor to file an affidavit each year showing total sales of insurance and sales of controlled insurance as named in the statute.

In both Sections 61-1710 and 61-1711, it is stated that the Director shall not issue, renew, or permit to exist any agent's, broker's, or solicitor's license except in compliance with the article or with respect to any individual not qualified as to the provisions of these sections.

As soon as the director may determine that a person is not qualified for any reason named in this section, including subsections (f) and (g) of both sections, he should order a hearing

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on the matter, giving the notice, as required in Section 61-1422,
to all persons affected.

If, upon hearing, it is determined that a licensee is not
qualified, the director should revoke his license.

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